



## Report to the Auburn City Council

Action Item

11

Agenda Item No.

City Manager's Approval

**To:** Mayor and City Council Members  
**From:** Councilman Kevin Hanley  
**Prepared by:** Amy M. Lind, Deputy/Assistant City Clerk  
**Date:** November 14, 2011  
**Subject:** Aggressive Solicitation Ordinance: Gas Stations

### The Issue

Should the City Council hold a First Reading of an Ordinance to Amend the Auburn Municipal Code to ban aggressive solicitation at gas stations in the city?

### Conclusions and Recommendation

Hold a First Reading, by Title only, of an Ordinance amending Chapter 121 to the Auburn Municipal Code related to aggressive solicitations (panhandling) at gas stations.

### Background

On July 25, 2011 the City Council adopted a second reading of an ordinance to restrict aggressive solicitation or panhandling in the city. The ordinance specifically prohibits panhandling within 15 feet of any entrance or exit of any bank or check cashing business, within 15 feet of an automated teller machine (ATM), within the public right of way of a motor vehicle, or on public transportation. The argument made by city staff to prohibit panhandling at these locations is that the person being aggressively solicited is a "captive audience" and cannot immediately walk away from the panhandler.

At the July 25<sup>th</sup> city council meeting I mentioned that I would like to amend the ordinance at a future council meeting to include gas stations on the list of locations in which aggressive solicitation would be prohibited. I believe this recommendation is consistent with our current ordinance. When a person is fueling his or her vehicle or pumping air or water, he or she is a "captive audience" and cannot immediately walk away. This situation has happened to me and I know of others who regard this situation as threatening. At the time, the City Attorney indicated that he saw no legal problem with this proposed ordinance change. It is a policy question for the City Council.

I suggest that the ordinance be amended to add the following language to the Council Findings:

*Aggressive solicitation while a person is filling his or her vehicle with fuel, air or water is particularly threatening because the person is a "captive audience" and cannot immediately walk away from his or her vehicle while it is connected to a fueling pump, air or water hose.*

I recommend that Section 121.03 be amended with the following language:

*Gas Stations. No person shall solicit, ask or beg within 15 feet of a fueling pump, air or water hose at a gas station.*

*"Gas Station" means a business that sells vehicle fuel that is dispensed by a pump.*

**Alternative Available/Implications of Alternatives**

Do not adopt the proposed ordinance change and thus permit aggressive solicitation at gas stations in Auburn under specified circumstances.

**Fiscal Impact**

The expansion of the scope of the regulation of solicitations should not meaningfully affect the workload of city police officers.

ORDINANCE NO. 11-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING  
THE AUBURN MUNICIPAL CODE TO ADD A NEW CHAPTER 121 REGARDING  
AGGRESSIVE SOLICITATION

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: The City Council of the City of Auburn hereby finds:

1. Aggressive solicitation contributes to the loss of full access to public places, as solicitors often directly or indirectly block free access to these locations.

2. Aggressive solicitation also creates an implicit threat of immediate physical harm to any persons unwilling to give money or act in the manner requested by the solicitor, and sometimes leads to violence.

3. When a person visits a bank, automated teller machine, or check cashing businesses, it is obvious that such persons have cash. Also, when at, or entering or exiting the vicinity of locations, the patrons of the locations are particularly vulnerable and more susceptible to fear and surprise than when elsewhere.

4. Motorists are sometimes confronted by persons who without permission wash their vehicle's windows at traffic intersections, despite explicit indications by drivers not to do so, and yet, because the motorist is sitting in a vehicle at an intersection, in most cases, the person cannot legally exit the car and is a "captive audience." In these situations, the threat of aggressive solicitation is particularly dangerous because the person is sometimes implicitly threatened with being "carjacked" and is often implicitly threatened for failure

1 to pay for a service already rendered. Additionally, when people in traveling  
2 vehicles are approached by solicitors in the right of way, the solicitations can  
3 impede traffic, and can create dangers to both vehicular and pedestrian traffic.

4  
5 5. Aggressive Solicitation in a public transportation vehicle is  
6 particularly threatening and dangerous because a person in a bus or a train or  
7 other public transportation vehicle is in essence, a "captive audience." With  
8 the inability to walk away without some personal cost, unwelcome solicitations  
9 are particularly threatening and confrontations may result.

10 6. Accordingly, the City Council concludes that the limitations in  
11 expressive activity included in this ordinance are reasonably necessary to  
12 prevent actual and perceived assaults and traffic safety hazards and to  
13 preserve the public peace. Further, the City Council finds that sufficient  
14 alternative locations are available within the City for solicitations of this kind to  
15 occur that the balance the City Council has struck between protecting the  
16 public and facilitating solicitation is appropriate.

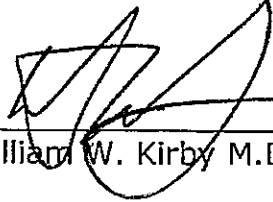
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18 Section Two: Chapter 121 is hereby added to the Auburn Municipal Code  
19 in the form attached hereto as Exhibit A.

20 Section Three: This Ordinance shall take effect thirty days following its  
21 adoption as provided by Government Code Section 36937.

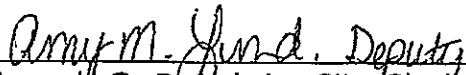
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23 Section Four: Should any provision, section, paragraph, sentence or  
24 word of this Ordinance be rendered or declared invalid by any court of  
25 competent jurisdiction or by reason of any preemptive legislation, the  
26 remaining provisions, sections, paragraphs, sentences or words of this  
27 Ordinance shall remain in full force and effect.

1        Section Five:     The City Clerk shall certify to the passage and adoption  
2 of this Ordinance and shall give notice of its adoption as required by law.

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4 DATED: July 25, 2011


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William W. Kirby M.D., Mayor

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10 ATTEST:

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12 Joseph G. R. Labrie, City Clerk

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14 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
15 that the foregoing ordinance was duly passed at a regular meeting of the City  
16 Council of the City of Auburn held on the 25th day of July 2011 by the  
following vote on roll call:

17        Ayes:        Powers, Hanley, Holmes, Nesbitt, Kirby  
18        Noes:  
19        Absent:

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Joseph G. R. Labrie, City Clerk

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22 APPROVED AS TO FORM:

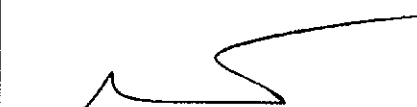
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25 Michael G. Colantuono, City Attorney  
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EXHIBIT A

Chapter 121

AGGRESSIVE SOLICITATION

Section

121.01	Definitions
121.02	Aggressive solicitation prohibited
121.03	All solicitation prohibited at specified locations
121.04	Penalty
121.05	Severability
121.06	Non-exclusivity

**Section 121.01 Definitions**

For purposes of this section:

(A) "Solicit, ask or beg" shall include using the spoken, written, or printed word, or bodily gestures, signs or other means to request an immediate donation of money or other thing of value or to offer the sale of goods or services.

(B) "Public place" shall mean a place to which a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, apartment house or hotel not constituting a room or apartment designed for residence.

**Section 121.02 Aggressive solicitation prohibited**

(A) No person shall solicit, ask or beg in an aggressive manner in any public place.

(B) "Aggressive manner" shall mean any of the following:

(1) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to:

(a) fear bodily harm to him- or herself or to another, or damage to or loss of property, or

(b) otherwise be intimidated into giving money or other thing of value;

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without the consent of that person or an occupant or owner of that vehicle;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

(4) Using violent or threatening gestures toward a person solicited;

(5) Persisting in closely following or approaching a person, after the person has informed the solicitor by words or conduct that he or she does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

(6) Using profane, offensive or abusive language that is likely to provoke a violent reaction.

### **Section 121.03 All solicitation prohibited at specified locations**

(A) Banks, Check Cashing, and ATMs. No person shall solicit, ask or beg on public property within 15 feet of any entrance or exit of any bank or check cashing business during its business hours or within 15 feet of any automated teller machine when it is available for customer use. When an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility.

(1) Definitions. For purposes of this section:

(a) "Bank" means any member bank of the Federal Reserve System, and any bank, savings and loan association, credit union, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of California or the United States whether or not the deposit of such institutions are insured by the Federal Deposit Insurance Corporation.

(b) "Check cashing business" means any person licensed as a check seller, bill payer, or prorater pursuant to Division 3 of the California Financial Code, commencing with section 12000.

(c) "Automated teller machine" or "ATM" shall mean any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account.

(d) "Automated teller machine facility" shall mean an area inside a structure in which one or more automated teller machines are located but excluding an area within any structure the primary purpose or function of which is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings.

(B) Motor vehicles. No person shall approach an operator or occupant of a motor vehicle travelling within a public right of way for the purpose of soliciting, asking or begging. A vehicle is "travelling" for this purpose even though stopped at an intersection or otherwise in compliance with traffic control laws and regulations but not if parked legally. This prohibition does not apply to solicitations related to emergency repairs requested by an operator or occupant of a vehicle.

(C) Public transportation vehicles. No person may solicit, ask or beg in any publicly owned or operated vehicle, including a bus, designed, used or maintained for carrying 10 or more persons, including the driver.

#### **Section 121.04      Penalty**

An intentional violation of this section is punishable as a misdemeanor pursuant to chapter 10 of this code.

#### **Section 121.05      Non-exclusivity**

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter.